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10-06-2025  
(Ct. no.37)  
debajyoti  
(Bench ID  
266330)

**FMA 914 of 2025**  
+  
**IA NO:CAN/1/2025**

**Siddhartha Chandra**  
**Vs.**  
**Sk. Abul Kasem & Ors.**

Mr. Sukumar Bhattacharyya,  
Ms. Subhangi Bhattacharya  
... For the Appellant.

Mr. S. T. Mina,  
Mr. Pratick Sardar  
... For the Respondent No.1.

**Dictated by Arijit Banerjee, J.**

1. By consent of the parties, the appeal and the connected application are taken up together for hearing and disposal by treating the same as on the day's list.

2. This appeal is directed against an order dated April 08, 2025, passed by the learned District Judge, Hooghly, in Misc. Case No.31 of 2025 being an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter '1996 Act') filed by the respondent no.1 herein.

3. The respondent no.1 herein approached the learned trial Court contending that although he is entitled to and has been running a cinema hall since 2010, the respondents before the learned trial Court are unlawfully interfering with such right of the present respondent no.1. The learned trial Court, upon considering the material on record, passed an *ex parte* ad interim order of injunction restraining the opposite party no.1 before the learned trial Court, being the appellant herein, from alienating the suit property or any part thereof and also restraining him from creating any third party interest in respect of the suit

property and to maintain *status quo* in respect thereof. The petitioner before the learned trial Court was directed to take steps for initiating arbitration proceedings “as per rules”.

4. The learned trial Court also appointed a learned advocate practising in the Hooghly District Court as Advocate/Commissioner to hold local inspection of the suit property upon notice to all parties and to submit a report to the learned trial Court. Being aggrieved, the respondent no.1 before the learned trial Court has come up by way of this appeal.

5. We have heard learned counsel for the parties for quite some time.

6. Learned counsel for the appellant says that in the facts of the case, an *ex parte* ad interim order of injunction was not warranted. Nor should the learned Court have appointed an Advocate Commissioner at the *ex parte* ad interim stage. There was no such grave urgency in the matter.

7. Learned advocate for the respondent no.1 herein says that there was and is a real apprehension of the respondents before the learned trial Court and in particular, the present appellant alienating the suit property which would cause irreparable prejudice to the present respondent no.1. Hence, the learned trial Court was perfectly justified in passing the order that is sought to be impugned in this appeal.

8. We are of the view that insofar as the order of injunction is concerned, the same is not causing such prejudice to the appellant as would warrant immediate interference. The appellant would be at liberty to pray for vacating of the order of injunction before the learned trial Court. In any event, we direct that the order of injunction shall continue till July 10, 2025 or until further order of

the Trial Court, whichever is earlier. It will be open for the learned trial Court to vacate the injunction order or to extend the same upon hearing both the parties.

9. Insofar as the appointment of Advocate Commissioner is concerned, we are of the opinion that the same ought not to have been made by the learned trial Court at the *ex parte* ad interim stage. We set aside that portion of the impugned order. However, it will be open for the respondent no.1 herein to renew his prayer for appointment of Advocate Commissioner or make any other similar prayer before the learned trial Judge who is requested to consider and decide such prayer in accordance with law upon hearing both parties.

10. The learned trial Judge is requested to dispose of the application under Section 9 of the 1996 Act in accordance with law, without being influenced by any observation made in this order.

11. Learned advocate for the appellant says that his client is not a party to any arbitration agreement. Therefore, no question of referring the disputes to arbitration can arise. Consequently, an application under Section 9 of the 1996 Act would also not be maintainable. He further says that it is the appellant who is running the cinema hall since 2018 and not the respondent no.1 herein.

12. Learned advocate for the respondent no.1 disputes each and every submission made on behalf of the appellant, as recorded above.

13. We are not deciding the disputes indicated above. Learned trial Court is requested to decide all such disputes.

14. The appeal and the connected application are, accordingly, disposed of.

15. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

16. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

**(Rai Chattopadhyay, J.)**

**(Arijit Banerjee, J.)**